

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF  
TELECOMMUNICATIONS & ENERGY**

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July 7, 2003

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Re: Complaint of Schreiber and Associates, P.C. and S&A Services of Watertown, Ltd. Regarding CTC Communications Corporation, D.T.E. 02-86

Dear Mr. Kallaher and Ms. Kiddoo:

I. INTRODUCTION

On June 2, 2003, the Department of Telecommunications and Energy ("Department") dismissed the Complaint of Schreiber and Associates, P.C. and S&A Services of Watertown Ltd. ("Schreiber/S&A Services") regarding CTC Communications Corporation's ("CTC") provision of telecommunications services to Schreiber/S&A Services. In the Order dismissing the Complaint, the Department determined that, consistent with Department precedent concerning complaints by commercial customers of utility companies, the claims raised in Schreiber/S&A Services' Complaint against CTC were more appropriately heard by a court rather than the Department. D.T.E. 02-86, at 8-14. The Department stated that "[a]s these parties already have a pending action in [United States D]istrict [C]ourt in which these matters can be addressed, such a conclusion is particularly appropriate here." Id. at 13.

On June 20, 2003, Schreiber/S&A Services filed a Motion for Clarification with the Department, seeking a determination whether the Department dismissed Schreiber/S&A Services' Complaint "with prejudice" or "without prejudice" (Motion at 2). Schreiber/S&A Services states that clarification is necessary because if the dismissal is without prejudice, Schreiber/S&A Services would remain able to present issues to the Department that a court might find are reserved to the Department for consideration (*id.* at 3). If the Department's dismissal is with prejudice, argues Schreiber/S&A Services, it would be unable to present such issues and a gap would be created between the jurisdictions of the Department and the court into which important issues of Massachusetts regulatory law might fall (*id.*). Schreiber/S&A Services requests that the Department clarify its Order to find that the dismissal was without prejudice to re-file (*id.*). CTC responds that Schreiber/S&A Services' motion is a "procedural ploy" that the Department should not condone (CTC Response at 1-2). CTC argues that allowing Schreiber/S&A Services an open-ended opportunity to return to the Department would be a misuse of Department procedures and a waste of the Department's and CTC's resources (*id.* at 1).

## II. STANDARD OF REVIEW

Clarification of previously issued Orders may be granted when an Order is silent as to the disposition of a specific issue requiring determination in the Order, or when the Order contains language that is sufficiently ambiguous to leave doubt as to its meaning. Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

## III. ANALYSIS AND FINDINGS

We do not agree that our June 2, 2003 Order was sufficiently ambiguous as to leave doubt as to our disposition of Schreiber/S&A Services' Complaint. The Department determined that there were no issues presented in Schreiber/S&A Services' Complaint, and further expounded upon on brief, that are exclusively reserved to the Department for consideration. Rather, the Department determined that Schreiber/S&A Services' allegations constitute a "'plain vanilla' billing dispute pursuant to [the parties'] service contract" that a court may be relied upon to address. See D.T.E. 02-86, at 11-14. Therefore, the Department

dismissed Schreiber/S&A Services' Complaint without leave to re-file. Schreiber/S&A Services' Motion for Clarification is denied.

By Order of the Department,

\_\_\_\_\_/s/\_\_\_\_\_  
Paul B. Vasington, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
James Connelly, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
W. Robert Keating, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Eugene J. Sullivan, Jr., Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Deirdre K. Manning, Commissioner

cc: John J. Dussi, Esq.